# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1919.**

---

## No. 388.

---

LAWRENCE AMOS, PLAINTIFF IN ERROR,

*vs.*

UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

---

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

---

## BRIEF FOR PLAINTIFF IN ERROR.

---

### Statement.

The plaintiff in error, who will be hereinafter referred to as the defendant, was placed on trial on March 8, 1919, in the District Court of the United States for the Eastern District of South Carolina, under an indictment containing six counts charging him with having violated sections 3258 and 3281 (two counts), 3279 and 3286 (two counts), R. S. U. S. He was found not guilty on the first four counts and guilty on the fifth and sixth counts, and this appeal is taken upon a writ of error and assignment of errors involving the application of the Fourth and Fifth Amendments of the United States Constitution.

The fifth count charged the defendant with removing and aiding in the removal of certain distilled spirits, on which the taxes had not been paid, to a place other than a distillery warehouse, and the sixth count charged the concealing and aiding in concealing such spirits.

The assignments of error, three in number, question the refusal of the presiding judge to grant the petition of the defendant, filed prior to the offering of any testimony, praying for the return to him of private property seized in an unlawful search of his home by agents of the Government and intended to be used as evidence against him; in admitting, over defendant's objection, the testimony of the witnesses for the Government and in refusing to strike out such testimony when it appeared that the same had been obtained in an unlawful search of the defendant's home.

**Specification of Errors.**

(1) That his honor erred in refusing to grant the petition of the defendant, presented to the court before taking the testimony in the case, to return private property seized by officers of the Government during a search of the defendant's home and buildings within his curtilage, during his absence and without his permission, when said officers did not have in their possession a search warrant describing the places to be searched and the property for which search was to be made, and when it was intended that such private property would be used by the Government as evidence against the defendant. This being in violation of the defendant's rights as guaranteed by the Fourth and Fifth Amendments of the United States Constitution.

(2) That his honor erred in admitting, over the objection of the defendant, the testimony of J. P. Coleman and C. A. Rector, revenues officers and witnesses for the Government, when it appeared that such testimony concerned private prop-

erty of the defendant and was obtained by such witnesses, as revenue officers, in an unlawful search of the defendant's home and the buildings within his curtilage, during his absence and without his permission, and without having in their possession a search warrant or other authority describing the places to be searched and the property for which search was to be made. Such testimony being with respect to a bottle, said to contain not quite a half pint of illicitly distilled whiskey found in the store of the defendant, which was in the same enclosure with the defendant's home, and two bottles, one said to contain a full quart and the other a little over a quart of such whiskey, found in the home of the defendant. This being inadmissible in evidence against the defendant and in violation of the rights of the defendant as guaranteed to him by the Fourth and Fifth Amendments to the Constitution of the United States.

(3) That his honor erred in refusing the motion of the defendant to strike from the record the testimony of the Government's witnesses, Coleman and Rector, after said witnesses had admitted that the three bottles, said to contain illicitly distilled whiskey, had been seized by them in the store and home of the defendant in a search of said premises, during his absence, by said witnesses acting as revenue officers, without having in their possession a search warrant describing the places to be searched and the property for which search was to be made. This being inadmissible as evidence against the defendant and in violation of the rights of the defendant as guaranteed by the Fourth and Fifth Amendments of the Constitution of the United States.

## ARGUMENT.

While there are three assignments of error, yet, as they all raise the same question, they will be discussed together.

There can be no dispute as to the fact that the bottles of whiskey testified about by the Government's witnesses were

seized by them, as revenue officers, during the search of the defendant's store and home, during his absence and when they did not have a search warrant describing the places to be searched and the property for which search was to be made, as their authority to make such search and seizure, because the witnesses themselves admit the same. (Folio 19.) Such being the admitted fact, the testimony was clearly incompetent and should not have been admitted over defendant's objection, or, if admitted, should have been stricken out upon the defendant's motion.

Fourth Amendment United States Constitution.
Fifth Amendment United States Constitution.
Weeks *vs.* U. S., 232 U. S., 383.
Silverthorne Lumber Company *vs.* U. S., U. S. Sup. Ct. Advance Opinions, 1919-1920, page 208.

Likewise, such property having been so obtained, and it so appearing from the records of the court, the petition of the defendant should have been granted and the property returned.

Weeks *vs.* U. S., *supra.*
Silverthorne Lumber Company *vs.* U. S., *supra.*

Such evidence being the only testimony in the record upon which a verdict of guilty on the fifth and sixth counts of the indictment could stand, the failure of the court to order a return of the property to the defendant and the admission of the testimony by the court was highly prejudicial of the rights of the defendant. A lawful manner to have obtained such evidence is provided for by the Fourth Amendment of the United States Constitution.

R. DOZIER LEE,
CHARLES A. DOUGLAS,
*Attorneys for Plaintiff in Error*